APPEAL NO. 93461

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993). On May 11, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine the issue of whether the claimant, who is the appellant in this case, sustained a repetitive trauma back injury in the course and scope of her employment by (employer) on or about (date of injury).

The hearing officer determined that the claimant had not sustained a repetitive trauma injury by sitting, and that the carrier was absolved of liability for benefits.

The claimant has appealed this decision, arguing various detailed facts that are not in the record of the case, and arguing further that the fact that she did not have a footrest alone established a connection between her work and her back injury. The claimant argues that medical evidence is not required to establish causation. The carrier responds by citing previous Appeals Panel decisions and the need for medical evidence in this case. The carrier also points out that the evidence shows that an incident happened at home leading to the debilitating pain and injury, not at work.

DECISION

The decision of the hearing officer is affirmed.

The claimant testified and stated that she worked for employer as a temporary typist, and was sent out on assignment to Sony (electronics firm) where she worked for 13 months. The claimant stated that she remained seated for long hours working on a computer; witnesses from electronics firm estimated that her seated work time would be in the range of 50-60% of a given day. The claimant stated that she worked overtime and on Saturdays and Sundays, around 62½ hours per week. Her immediate supervisor from the electronics firm indicated that overtime was "open," not required, and that according to her review of a 12-month period of claimant's time cards, claimant averaged 47 hours per week.

Claimant acknowledged that she did not sit at her desk typing all the time, and said that because of her knowledge of WordPerfect software, she was asked to train or assist other clerical workers in the department.

The claimant stated that the day her injury manifested itself, which she believed was November 8, 1992, she had picked up her daughter from school that morning. She arrived at home, and suddenly had back pain so intense that she had to lie down and could not go to work. Claimant stated that the time she had felt back pain that intense was when she had a herniated disc at L4-5 in 1986 which required back surgery. Her disc at L5-S1 was excised at that time, according to medical records. In testimony, the claimant indicated that the prior condition did not result from an accident, but that she was told that it had to do with her stature and the way she carried herself, that it was just "wear and tear."

The claimant said her 1992 back condition was diagnosed as a pinched nerve. Her theory of claiming this condition as job related was that chairs provided by the company were too high, and that because she was shorter, her feet could not rest on the ground. She stated that she asked for a footrest several times but one was not provided. She stated that because the arms of the chair were long, she could not pull it close to the terminal which required straining to accomplish her tasks. Her supervisor at electronics firm stated that stenographic chairs without arms were readily available for use. The claimant acknowledged that her chair could be adjusted, but said that if it were lower, then problems would develop with her upper back (where her pain had been initially prior to the adjustment of the chair to a higher level).

An MRI examination on February 1, 1993, revealed mild bulging of L4-5 disc, no evidence of stenosis. The thoracic spine was normal. Claimant was released to work March 23, 1993. A letter dated December 7, 1992, from the (medical facility), Dr. A, stated that he did not believe claimant's condition to be job related because "just working more hours sitting" would not give her a recurrent disc herniation, which he believed she had. Although other medical records indicate in history that claimant worked long hours, none makes the causal connection to her back condition to the workplace, or a chair. The letter attached as Exhibit A to claimant's appeal is not in the record. The records show that claimant has, since her back surgery, been treated for complaints of headaches and back spasms. The claimant indicated that during the time she worked at the electronics firm, she had an episode of back pain resulting from a night of dancing.

There is evidence here that the incident which caused claimant to begin to lose time from work did not occur at all on the job. For purpose of this discussion, however, we will review the case in light of claimant's assertion that her cumulative activities caused or aggravated her back condition. The Appeals Panel has previously considered contentions that repetitive trauma was caused by long hours in a chair. Texas Workers' Compensation Commission Appeal No. 92272, decided August 5, 1992; Texas Workers' Compensation Commission Appeal No. 92340, decided September 3, 1992. In both cases, we noted that medical evidence would be required to prove that sitting in a certain type of chair would cause back injury, because such a connection was beyond the knowledge of a layman, based upon common experience. *See* Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1990). The evidence must establish a causal link by reasonable medical probability, not a possibility. Schaefer, cited above. (The document that claimant attaches to her appeal signed March 23, 1993, would not establish such a probability, as it states that the condition "may" be related to work.) In addition, recent case law indicates that where the activity is one that an employee shares with the general public (in this case, the act of sitting) and where the employee is not exposed to a greater hazard by virtue of the particular employment, compensation under workers'

compensation will not be allowed. *See* Employers' Casualty Co. v. Bratcher, 823 S.W.2d 719 (Tex. App.-El Paso 1992, n.w.h.). While that case involved an accidental injury, the concept of "positional risk" is somewhat incorporated into the definition of "occupational disease," under Art. 8308-1.03(36), which excludes compensability for an ordinary disease of life "to which the general public is exposed outside of employment . . ."

In the case at hand, where medical evidence establishing a causal connection to specific functions or repetitive activity at work is lacking, the hearing officer's decision is sufficiently supported by the record, and is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge